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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4368 OF 2006

Bandu Maruti Mhatre .. Applicant
Versus
State of Maharashtra .. Respondent

Mr.R.D.Suryavanshi for applicant
Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 8th December 2006

P.C.

. Applicant has been arrested on 13th june 2006 in connection with C.R.No.138 of 2006. Offences alleged are punishable under section 302, 109 read with 34 I.P.C.

2. Applicant had earlier applied for bail before the trial court as well as this Court but his applications were rejected/withdrawn. Subsequently, co-accused Yogesh who was earlier

denied bail applied for bail and his application is allowed by the learned Additional Sessions Judge, Kalyan. Due to this changed circumstances, applicant applied for bail afresh by filing the application No.203 of 2006, which has been rejected on 20th November 2006. That is how the present application is instituted.

3. Mr.Suryavanshi has taken me through F.I.R. and the statement of waitor/employee of the deceased so also that of the sister. He submits that the sister clearly names the co-accused Yogesh as involved in the attack/assault. The knife was also recovered at his instance. However, he has been enlarged on bail. As far as the present applicant is concerned all that is alleged is he is the master mind behind the crime and at his instance the assault took place. The distinguishing features, therefore, are not tenable. Merely because blood stained clothes of accused Nos. 2 and 3 were recovered from the house of relative of the

present applicant and that his name has been mentioned by the deceased while being taken to hospital, it does not mean that his role is in any way different.

4. After having perused the application and the annexures thereto, I am of the opinion that the learned Judge was in error. Prima facie, once the assailent Yogesh has been enlarged on bail, then, the applicant who did not participate in the assault but the same allegedly took place at his instance, could not have been denied the relief. In the peculiar facts of this case and considering the statements of the Waiter/employee and sister of the deceased, the applicant deserves to be enlarged on bail on the ground of parity. Hence following order:-

i) The applicant arrested in connection with C.R.No.138 of 2006 registered with Dombivali Police Station shall be enlarged on bail in the sum of

Rs.15,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant shall reside outside the limits of Dombivali Police Station and will report to nearest police station to his residence once a fortnight till conclusion of the trial.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to

condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)